

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION I

CACR05-1248

June 14, 2006

CHRISTOPHER MICHAEL JACKSON
APPELLANT

AN APPEAL FROM CRITTENDEN
COUNTY CIRCUIT COURT
[CR97-749R]

V.

HON. DAVID BURNETT, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Christopher Jackson appeals from the trial court's order revoking his probation. His sole argument is that the trial court denied his right to confront a witness against him when it admitted hearsay evidence concerning where he lived. We agree that the trial court erred in admitting the hearsay evidence, which violated appellant's right to confront the witnesses against him. However, we affirm because 1) in revoking appellant's probation, the trial court did not rely on the State's allegation that appellant failed to report a change-of-address, and 2) appellant does not independently challenge the other grounds cited by the trial court in revoking his probation.

Appellant was placed on ten years' probation in 1997, after pleading guilty to theft and burglary. At this time, he resided at 615 South 15th Street in West Memphis, Arkansas. The State subsequently filed three petitions to revoke appellant's probation: the first petition was filed on June 15, 2001; the first-amended petition was filed on January 21, 2005; the second-amended petition was filed on June 1, 2005. The second-amended petition listed the

following grounds for revocation: 1) failure to pay fines and costs; 2) failure to report; 3) failure to pay probation fees; failure to report appellant's address and place of employment; 4) obstruction of governmental operations; 5) disorderly conduct; 6) possession and use of cocaine.

The revocation hearing was held on August 5, 2005, during which Deborah Wiseman, an employee of the fines and costs division of the Crittenden County Sheriff's Department, testified that appellant had not paid any of the \$1125 originally imposed for fines and costs. She further explained that, with the penalties assessed for nonpayment, appellant now owes \$1545 in fines and costs.

Appellant's probation officer, James Russell, testified in great detail regarding the numerous times that appellant failed to report. He specifically testified that after the revocation petition was filed in 2001, appellant reported only ten times, and that on each occasion appellant either tested positive for cocaine usage or admitted to using cocaine. Russell further stated that he had not seen appellant since March 2005, when appellant was in court due to the obstruction-of-governmental-operations charge, and that before March, the last time he had seen appellant was July 26, 2004.

The objection on which appellant bases his appeal arose when Russell testified that in June 2001, he telephoned appellant's South 15th Street address and someone at that address "verified that they hadn't seen him [appellant] in two years." Appellant objected on confrontation grounds. The trial court overruled the objection.

Officer Futch (whose first name is not in the record) testified that he arrested appellant on December 30, 2004, for obstruction of governmental operations after appellant gave the officer a false name while the officer was investigating an aggravated assault.

Appellant testified that he paid "something" in 1997, but had been unable to pay his

finest and costs due to his drug problem. He also testified that he resided at 621 South 15th Street and had lived there all of his life. He further admitted that he told Russell that he failed to report on occasion because he was on drugs and that he had not reported since March 2005 because he knew he would be tested for drugs.

The trial court revoked appellant's probation with the following statement: "The court finds the defendant is in violation of the terms and conditions of probation; specifically, by violating good conduct, failing to report as directed, failing to pay fees and costs as ordered, obstructing governmental operations, use of cocaine, and that's sufficient. There's probably more." Appellant was sentenced to serve twenty years in the Arkansas Department of Correction and was ordered to enroll in a drug treatment program.

Appellant argues on appeal that the trial court erred in admitting the hearsay testimony regarding whether he had moved. We agree that the court erred in admitting this evidence because it violated appellant's confrontation right; however, the error does not warrant reversal because the trial court did not rely on the evidence concerning appellant's address in revoking his probation and because appellant does not challenge the additional, independent bases on which the trial court did rely in revoking his probation.

It is well-settled that the Arkansas Rules of Evidence, including the rules regarding hearsay, do not apply in revocation hearings. *Jones v. State*, 31 Ark. App. 23, 786 S.W.2d 851 (1990). However, a defendant retains the right to confront witnesses, even in a revocation proceeding. Ark. Code Ann. § 5-4-310(c)(1) (Repl. 2006); *Jones, supra*. Further, in a revocation proceeding, the trial court must balance the probationer's right to confront witnesses against the grounds asserted by the State for not requiring confrontation. *Goforth v. State*, 27 Ark. App. 150, 767 S.W.2d 537 (1989). The trial court must first assess the explanation offered by the State for why confrontation is undesirable or impracticable. *Id.*

A second factor that must be considered is the reliability of the evidence which the government offers in place of live testimony. *Id.*

Here, appellant is correct in asserting that the trial court erred in admitting Russell's hearsay testimony regarding appellant's address. Clearly, the State failed to offer any reason for not requiring confrontation of the witness who told Russell that appellant had not lived at the South Street address for two years. Further, the State failed to present any indicia of the reliability of Russell's testimony. It follows, then, that without this information, the trial court did not engage in the balancing test required pursuant to *Goforth, supra*.

However, this error does not warrant reversal for two reasons. First, appellant cannot demonstrate prejudice from the error because the trial court did not rely on the evidence regarding whether appellant failed to report his address in revoking his probation. Even though appellant's constitutional right to confront a witness against him was violated, he cannot demonstrate error where he admittedly violated other grounds of his probation. *See, e.g., Bonds v. State*, 298 Ark. 630, 770 S.W.2d 136 (1989) (affirming the revocation of the defendant's probation where the State failed to provide the defendant his due-process right to discovery prior to the revocation hearing but where the defendant admitted that he violated the conditions of this probation).

Second, we do not reverse because appellant does not challenge the other grounds the trial court cited in revoking appellant's probation. Even though the State is required to prove, by a preponderance of the evidence, that a defendant violated only a single condition of his probation, *see Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998), the trial court determined that appellant violated the following *five* conditions of his probation: appellant's admitted failure to report and to pay fines and costs, his admitted use of cocaine, his obstruction of governmental operations, and his violation of the good-conduct condition.

Appellant does not challenge any of these grounds. We may affirm where, as here, a trial court expressly based its decision on multiple, independent grounds, and a defendant challenges only one of those grounds on appeal. *See Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002).

Affirmed.

HART, J., agrees.

PITTMAN, C.J., concurs.